

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

**In the Matter of a Petition for Extended
Area Service from the Crane Lake Exchange
to the Orr Exchange**

ISSUE DATE: June 29, 2001

DOCKET NO. P-551,407/CP-00-891

**ORDER REQUIRING COST STUDIES
AND PROPOSED RATES**

PROCEDURAL HISTORY

On June 28, 2000, Ms. Susan Hankner filed a petition with the Minnesota Department of Commerce (the Department) seeking extended area service (EAS) from the Crane Lake exchange (served by Citizens Telecommunications of Minnesota) to the Orr exchange (served by CenturyTel of Minnesota, Inc.) The matter was assigned to the current docket.

In its July 24, 2000 Order in Docket No. P5316, 407/PA-99-1239 (the GTE sale of exchanges docket) the Commission addressed Ms. Hanker's request, determining that her EAS petition contained fewer than the number of signatures required by the Commission's procedures but that there were enough signatures on the petition to make it highly likely that the required 15 percent requirement could be met. Therefore, the Commission directed Citizens to conduct traffic studies while additional signatures were collected. The Commission clarified that it was not waiving the EAS threshold requirements and that a valid petition would be required.

On August 10, 2000, GTE Minnesota filed a traffic study in this matter. The results of the traffic study showed that, between June 1999 and May 2000, from 11.78 percent to 24.66 percent of the Crane Lake customers made three or more calls per month to the Orr exchange.

On January 17, 2001, the Department filed comments on the traffic study. The Department noted that the traffic from the Crane Lake exchange to the Orr exchange is not sufficient to satisfy the Commission's criterion that at least 50 percent of the customers in the petitioning exchange must make three or more calls per month to the exchange or local calling area to which EAS is requested. However, the Department commented that the primary reason for filing the petition for EAS was to facilitate calling by the children within the school district.

The Department recommended, therefore, that the EAS petition be handled under Minn. Law (1997), Chapter 59, which establishes a process for installing EAS within combined school districts.

On January 29, 2001, Citizens Telecommunications of Minnesota (Citizens) filed reply comments in response to the Department's comments of January 17, 2001. In its comments, Citizens recommended that the Commission deny the petition and close the case. Citizens argued that the petition does not qualify for EAS because it contained only 33 signatures, significantly short of the 15 percent (56 in this exchange) required by the Commission. Citizens further argued that the petition should not be considered as a request for School District EAS.

On February 6, 2000, the Department filed comments responding to Citizen's January 29 reply comments. The Department countered Citizens' opposition to considering the petition a request for School District EAS. In addition, the Department recommended that the Commission suspend further action on the current case for a period of 60 days and direct the petition sponsor to submit the information necessary so that the current petition may fulfil the balance of requirements necessary to qualify the current petition to be processed under the School District EAS law.

On February 20, 2001, petition sponsor Susan Hankner filed comments and completed petitions in response to comments of the Department and Citizens. She provided an additional 116 signatures from the Crane Lake exchange and an additional 124 signatures from the Orr exchange, fulfilling the required 15 percent from each exchange.

The Commission met on June 5, 2001 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission prefers to reach the merits of matters that come before it, such as the petition filed by Ms. Hanker. Having considered carefully the circumstances of this case, the Commission finds that the statutory provisions establishing a process for installing EAS within combined school districts properly apply to this petition. Accordingly, the Commission has evaluated Ms. Hankner's petition as a petition for School District EAS under Minn. Laws (1997), Chapter 59¹ and found that the petition merits further processing. The Commission will so order.

In determining the applicability of the School District EAS provisions, the Commission considered the following:

¹ The Commission notes that at the hearing on this matter, Citizens withdrew the objections it initially raised to this approach.

First, this treatment is consistent with the petitioner's expressed intention to benefit the school children and their families.

Second, the petition was filed in time to be considered under the School District EAS provisions. Although the School District EAS provisions expired June 30, 2000, the petition, was filed two days earlier, on June 28, 2000.

Third, the record shows that all the requirements for School District EAS have been fulfilled:

- the petition includes the signatures from at least 15 percent of the customers in each exchange involved;**
- more than 10 percent of the customers in each exchange are residents of the consolidated school district; and**
- the petitioning exchange is adjacent to the local calling area to which EAS is requested.**

Fourth, the petitioner explained that when she originally filed the petition she was not aware of the School District EAS Law. While ignorance of the law is normally no excuse, in this situation the citizen petitioner's error in not characterizing her EAS petition as a request for School District EAS is understandable. When the School District EAS law was enacted, the session laws associated with the School District EAS law were never merged into Minn. Stat. Ch. 237 with the other telecommunications laws and never appeared in Minn. Stat. Ch. 237. Furthermore, the fact that this EAS petition was not denominated a petition School District EAS does not interfere with the Commission understanding the petitioner's intent.

Based on these findings and emphasizing that the petition was timely filed to be considered as School District EAS, the Commission will honor substance over form and proceed to process this petition as a request for School District EAS.

Specifically, the Commission will now order the affected telephone companies to file cost studies and proposed rates under the procedures for School District EAS. The cost studies and proposed rates will be filed within 90 days of the service date of the Order, with each company proposing rates that recover the costs of providing EAS apportioned equally among the exchanges identified in the petition. The companies will also be required to provide supporting information as requested by the Commission staff and the Department. Within 60 days following the filing of cost studies and proposed rates by the companies, the Department will file a report and recommendation regarding the proposed rates.

ORDER

- 1. Within 90 days of this Order, the affected telephone companies shall file cost studies and proposed rates, with each company proposing rates which recover the costs of providing EAS apportioned equally among the exchanges identified in the petition, together with supporting information as requested by the Commission staff and the Department.**
- 2. Within 60 days following the Companies filing cost studies and proposed rates, the Department shall file a report and recommendation regarding the proposed rates.**
- 3. Parties shall have 20 days to respond to the Department's report.**
- 4. The Executive Secretary is hereby granted authority to vary the above deadlines as the Executive Secretary deems necessary.**
- 5. This Order shall become effective immediately.**

BY ORDER OF THE COMMISSION

**Burl W. Haar
Executive Secretary**

(S E A L)

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